

EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - -

SITEONE LANDSCAPE SUPPLY, LLC,

Plaintiff, Civil Action No.

v. 2:23-CV-2084 (GRB) (SL)

NICHOLAS GIORDANO; DOMINICK CAROLEO;

VICTOR CAROLEO; NARROW WAY REALTY, LTD.;

NARROW WAY 2 LLC; THE GARDEN DEPARTMENT

CORP.; GROUP 5 ASSOCIATES, LTD.; 3670

ROUTE 112 LLC; 9 4TH ST. LLC; SCAPES

SUPPLY, LLC; NEWAY MANAGEMENT, LLC; AND

NEWAY TRUCKING,

Defendants.

- - -

March 13, 2025

- - -

Videotaped deposition of
VICTOR CAROLEO, conducted at Farrell
Fritz, P.C., 400 RXR Plaza, Uniondale, New
York, commencing at 10:00 a.m. EDT, on the
above date.

Magna Legal Services

866-624-6221

www.MagnaLS.com

Marie Foley

RMR, CRR

1

2 APPEARANCES:

3

4 ON BEHALF OF PLAINTIFF:

5 TROUTMAN PEPPER HAMILTON SANDERS, LLP

6 BY: EVAN GIBBS, ESQUIRE

7 600 Peachtree Street, NE

8 Suite 3000

9 Atlanta, Georgia 30308

10 PHONE: 470.885.3093

11 EMAIL: evan.gibbs@troutman.com

12 -and-

13 FARRELL FRITZ, P.C.

14 BY: KEVIN P. MULRY, ESQUIRE

15 400 RXR Plaza

16 Uniondale, New York 11556

17 PHONE: 516.227.0620

18 EMAIL: kmulry@farrellfritz.com

19

20

21

22

23

24

25

1

2 APPEARANCES:

3

4 ON BEHALF OF DEFENDANTS:

5 MILMAN LABUDA LAW GROUP PLLC

6 BY: JOSEPH M. LABUDA, ESQUIRE

7 MICHAEL C. MULE, ESQUIRE

8 3000 Marcus Avenue

9 Suite 3W3

10 Lake Success, New York 11042

11 PHONE: 516.328.8899

12 EMAIL: josephlabuda@mllaborlaw.com

13

14

15

16 ALSO PRESENT:

17 Don Caroleo

18

19 VIDEOGRAPHER:

20 Alejandro Gomez

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FEDERAL STIPULATIONS

IT IS HEREBY STIPULATED AND
AGREED by and between the parties hereto,
through their respective counsel, that the
certification, sealing and filing of the
within examination will be and the same
are hereby waived;

IT IS FURTHER STIPULATED AND
AGREED that all objections, except as to
the form of the question, will be reserved
to the time of the trial;

IT IS FURTHER STIPULATED AND
AGREED that the within examination may be
signed before any Notary Public with the
same force and effect as if signed and
sworn to before this Court.

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PLAINTIFF'S	DESCRIPTION	PAGE
1	Email thread March 21, 2023	15
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3	Email 15 Jul 2023, Bates DonCaroleo_000456-457	49

(REPORTER'S NOTE: All quotations from exhibits are reflected in the manner in which they were read into the record and do not necessarily denote an exact quote from the document.)

1

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3

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18 REQUEST FOR PRODUCTION OF DOCUMENTS

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10:13 a.m. EDT

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THE VIDEOGRAPHER: We are now on the record. This begins videotape number 1 in the deposition of Victor Caroleo in the matter of SiteOne Landscape Supply, LLC versus Nicholas George, et al., in the United States District Court, Eastern District of New York, Case No. CV-02084.

13

14

Today is March 13, 2025, and the time on the monitor is 10:13 a.m.

15

16

17

This deposition is being taken at Farrell Fritz, P.C., Uniondale, New York.

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22

The videographer today is Alejandro Gomez of Magna Legal Services, and the court reporter today is Marie Foley of Magna Legal Services.

23

24

25

Will counsel and all parties present state their appearances and whom they represent.

1

2

MR. GIBBS: Good morning. This
is Evan Gibbs on behalf of SiteOne
Landscape Supply, LLC.

5

6

7

MR. MULRY: Kevin Mulry from
Farrell Fritz also for plaintiff
SiteOne.

8

9

MR. LABUDA: Good morning. Joe
Labuda, Milman Labuda Law Group.

10

11

MR. MULE: Michael Mule, Milman
Labuda Law Group.

12

13

And with us our client Don
Caroleo.

14

15

THE VIDEOGRAPHER: Okay. Thank
you.

16

17

Will the court reporter please
swear in the witness.

18

19

20

THE STENOGRAPHER: If I could
ask you to raise your right hand,
please.

21

22

23

24

Do you swear or affirm the
testimony you give will be the truth,
the whole truth, and nothing but the
truth today?

25

THE WITNESS: Yes, I do.

1

2 So I'm just going to instruct
3 you not to answer the question.

4 THE WITNESS: Okay.

5 MR. GIBBS: And I'll ask one
6 other question about this email so
7 it's in the record.

8 BY MR. GIBBS:

9 Q. My other question is would you
10 have used your phone to send this
11 particular email?

12 A. I don't remember if I sent it at
13 all.

14 Q. You were initially represented
15 in this case by Mr. Saul Zabell; is that
16 right?

17 A. Mm-hm, yes.

18 Q. Do you remember approximately
19 the date that you hired or retained Mr.
20 Zabell?

21 A. I don't.

22 Q. And I'm not asking for the
23 substance of any communications, but did
24 Mr. Zabell ever tell you that you needed
25 to preserve documents and communications

1

2 for purposes of this case?

3 A. Not that I --

4 MR. LABUDA: I'm going to
5 object. We object, attorney/client
6 privileged communications.

7 So we're directing you not to
8 answer the question.

9 BY MR. GIBBS:

10 Q. And my follow-up questions to
11 that.

12 MR. GIBBS: And again give you
13 time to make your objections.

14 MR. LABUDA: Sure.

15 Q. But, was did you receive
16 instructions in writing from Mr. Zabell to
17 that effect; in other words, to preserve
18 and not destroy any documents or
19 communications?

20 MR. LABUDA: Same objection.

21 We're going to direct you not to
22 answer; attorney/client privileged
23 communications.

24 BY MR. GIBBS:

25 Q. Did Mr. Zabell ever tell you to

1

2 save emails?

3 MR. LABUDA: Same objection.

4 Don't answer.

5 BY MR. GIBBS:

6 Q. Did he ever tell you to save
7 text messages?

8 MR. LABUDA: Same objection.

9 Don't answer.

10 BY MR. GIBBS:

11 Q. Did he ever tell you to save any
12 other types of documents or communications
13 for purposes of this case?

14 MR. LABUDA: Same objection.

15 Don't answer.

16 BY MR. GIBBS:

17 Q. And do you ever re -- do you
18 recall receiving a document from Mr.
19 Zabell titled or referred to as a
20 "Litigation Hold"?

21 MR. LABUDA: Same objection.

22 Don't answer.

23 BY MR. GIBBS:

24 Q. And whether or not it came from
25 Mr. Zabell or from some other source, did

1

2 you understand at the beginning of this
3 lawsuit that you had an obligation to
4 preserve documents and communications that
5 are related to the case?

6 MR. LABUDA: I'm going to
7 instruct the witness not to answer
8 with respect to any attorney/client
9 communications.

10 And I got to -- we got to take a
11 break for a quick second just to deal
12 with the -- the privilege issue 'cause
13 you're, kind of, expanding it outside
14 of Zabell, I think, and any attorney,
15 right?

16 MR. GIBBS: Well, I can rephrase
17 the question.

18 MR. LABUDA: Okay.

19 MR. GIBBS: It will probably
20 make this easier.

21 MR. LABUDA: All right.

22 BY MR. GIBBS:

23 Q. Did anyone who's not an attorney
24 ever instruct or tell you that you should
25 or needed to preserve documents or

1

2 communications that are related to this
3 lawsuit?

4 MR. LABUDA: You can answer
5 that.

6 A. No.

7 Q. You later became represented by
8 the Rivkin Radler firm. Is that correct?

9 A. Yes.

10 Q. Do you remember, just
11 approximately, the date that you retained
12 them to represent you in this case?

13 A. I don't recall.

14 Q. Did any attorney at the Rivkin
15 firm tell you that you needed to preserve
16 documents or communications for purposes
17 of this lawsuit?

18 MR. LABUDA: Objection. Same
19 objection; attorney/client privileged
20 communication.

21 Don't answer the question.

22 MR. GIBBS: And if you won't --
23 if you want to say "same objection,"
24 totally fine.

25 MR. LABUDA: I'll just say "same

1

2 objection."

3 MR. GIBBS: And we'll consider
4 it preserved.

5 MR. LABUDA: That's fine. I
6 figured it was a new firm, let me get
7 the whole thing in.

8 MR. GIBBS: Got it.

9 BY MR. GIBBS:

10 Q. Did any attorneys from that firm
11 ever tell you to save emails?

12 MR. LABUDA: Objection.

13 Don't answer.

14 BY MR. GIBBS:

15 Q. Text messages?

16 MR. LABUDA: Same objection.

17 Don't answer.

18 BY MR. GIBBS:

19 Q. Or did any lawyer at that firm
20 tell you to save any other documents or
21 communications for purposes of the case?

22 MR. LABUDA: Same objection.

23 Don't answer.

24 BY MR. GIBBS:

25 Q. And do you recall ever receiving

1

2 a document from anyone at the Rivkin firm
3 titled or referred to as a "Litigation
4 Hold"?

5 MR. LABUDA: Same objection.

6 Don't answer.

7 BY MR. GIBBS:

8 Q. And you later became represented
9 by the Milman Labuda firm?

10 A. That's correct.

11 Q. Do you remember approximately
12 what date they became your attorneys of
13 record?

14 A. I don't.

15 Q. Did any attorney at the Milman
16 Labuda firm ever tell you that you needed
17 to preserve documents or communications
18 for purposes of the case?

19 MR. LABUDA: Same objection.

20 Don't answer.

21 BY MR. GIBBS:

22 Q. Did anyone at the Milman Labuda
23 firm ever tell you to save emails?

24 MR. LABUDA: Same objection.

25 Don't answer.

1

2 BY MR. GIBBS:

3 Q. Or text messages?

4 MR. LABUDA: Same objection.

5 Don't answer.

6 BY MR. GIBBS:

7 Q. Or any other documents or
8 communications for purposes of the case?

9 MR. LABUDA: Same objection.

10 Don't answer.

11 BY MR. GIBBS:

12 Q. Did you ever receive a document
13 from the Milman Labuda firm titled or
14 referred to as a "Litigation Hold"?

15 MR. LABUDA: Same objection.

16 Don't answer.

17 BY MR. GIBBS:

18 Q. And we've gone through three
19 specific law firms, but I'll ask a more
20 general question now.

21 Since March 21st, 2023, has any
22 other attorney ever instructed you not to
23 delete emails or text messages?

24 MR. LABUDA: Same objection.

25 Don't answer.

1

2 A. I'm good with ten years.

3 Q. Okay.

4 What -- what brand of phone do
5 you have? What -- what make is the phone?

6 A. It's an Apple.

7 Q. iPhone?

8 A. Yes.

9 Q. Do you know the model of the
10 phone, like iPhone 14?

11 A. No.

12 Q. Who is your wireless carrier for
13 that phone?

14 A. Verizon.

15 Q. How long have you used that
16 particular carrier?

17 A. Ten years.

18 Q. Other than this current cell
19 phone, and begin focusing on the time
20 period of October 1st, 2022 through today,
21 have you had any other phones either
22 issued to you or that -- that you've had
23 that you've used personally? For example,
24 a company-issued device, have you had
25 anything like that?

1

2 A. I don't know if I understand
3 your question, but I think I could answer
4 it by saying this.

5 This phone broke somewhere along
6 the line, I don't remember what year, and
7 I got it replaced. Maybe that happened in
8 the last two years.

9 Q. Was the phone replaced through
10 Verizon?

11 A. Yes.

12 Q. Was the phone replaced after
13 this lawsuit was filed, so after March
14 21st of 2023?

15 A. Yes.

16 Q. Did they transfer the data from
17 your old phone to the new phone when you
18 got the new one?

19 A. You know, I'm not too technical,
20 but I gave it to the guy at Verizon, I
21 says, you know, make sure this is the same
22 phone as I have now. So he did whatever
23 he had to do.

24 Q. When you turned on, if you
25 recall, when you turned on the new phone

1

2 that you got, did you see your old
3 messages and contacts and things like that
4 on the new phone?

5 A. I never went and observed that.
6 I was just interested that I had my apps.

7 Q. What happened to your old phone
8 that caused it to break? Was it a drop?

9 A. You know, I -- I suffer with
10 memory problems. That's why I'm on that
11 heavy medication, so I can't remember
12 exactly. But if I took a guess, I think I
13 got water in it, as I remember.

14 Q. And the old phone, do you still
15 have that phone, or did you trade it in to
16 Verizon?

17 A. You know, again with the memory
18 problems I'm going to say I traded it in,
19 but I don't recall.

20 Q. Do you have an iCloud account?

21 A. I've never used it, to my
22 recollection.

23 Q. Does your iPhone back up to your
24 iCloud account?

25 A. I have no idea.

1

2

MR. MULE: Can we take a
five-minute break?

4

MR. LABUDA: Sure.

5

MR. GIBBS: Sure.

6

THE VIDEOGRAPHER: We are going
off the record.

8

The time is 10:40.

9

(Recess taken.)

10

THE VIDEOGRAPHER: We are going
back on the record.

12

The time is 10:53.

13

MR. LABUDA: All right.

14

The witness -- if we could, the
witness wanted to clarify a couple
answers that he gave to a few
questions.

18

MR. GIBBS: Certainly.

19

MR. LABUDA: Okay.

20

Mr. Caroleo, with respect to the
timing of the replacement, of the
timing of when your old phone broke,
do you have a -- do you have a
recollection of when that was?

25

THE WITNESS: I don't have a

1

2 recollection.

3 MR. LABUDA: Do you know whether
4 or not it was before or after the
5 litigation here began?

6 THE WITNESS: I don't have a
7 recollection.

8 MR. LABUDA: Okay.

9 Second one, with respect to
10 the -- you were asked questions about
11 reviewing text messages, and I think
12 your answer was that you reviewed text
13 messages.

14 Do you know whether or not your
15 lawyers reviewed your text messages in
16 relation to this litigation?

17 THE WITNESS: My lawyers did
18 review those text messages.

19 MR. LABUDA: Okay.

20 BY MR. GIBBS:

21 Q. Did not?

22 A. They did.

23 Q. Did review text messages.

24 And which attorneys are you
25 referring to --

1

2 Before our break, we were
3 talking about your personal email account
4 which is the victorcaroleo@aol.com. I
5 want to ask you a few more questions about
6 that.

7 Have you communicated with Nick
8 Giordano via that email account at any
9 point?

10 A. No.

11 Q. Was that particular email
12 account searched as part of the discovery
13 process in this case?

14 A. I don't know.

15 Q. Do you recall turning over
16 access of the account to any of your
17 attorneys?

18 A. I don't recall.

19 Q. Since this case was filed, have
20 you deleted any emails from that
21 particular email account?

22 A. I'm sure I deleted stuff. It's
23 my common practice.

24 Q. And talking just about emails,
25 you mean it's a common practice for you to

1

2 delete emails --

3 A. Correct.

4 Q. -- in that account?

5 How often do you delete emails?

6 A. Basically every time I get
7 something it gets deleted, and the reason
8 for that is I'm having this memory problem
9 and it -- I get overwhelmed when I have a
10 lot of emails to go through. So I -- once
11 I go through them, I delete them.

12 Q. Do you know if your email
13 account retains deleted emails for any
14 period of time?

15 A. You know, if the -- if it does,
16 they get deleted too.

17 Q. So you double delete? You do
18 a --

19 A. Correct.

20 Q. You delete the deleted?

21 A. And this is a practice I've been
22 dealing with for years, but as the memory
23 problem became worse, like the memory
24 doctor said do whatever you can do to keep
25 your memory sharp as you can, and I do

1

2 everything I could do to keep it as sharp
3 as I can.

4 Q. And on the AOL email account, do
5 you check that email account from your
6 phone?

7 A. Yes.

8 Q. And turning to the Scapes Supply
9 email account, do you know what platform
10 that account uses? Is it a Gmail or an
11 Outlook type account?

12 A. I have no idea.

13 Like I said, I don't use it.

14 Q. Do you know if a litigation hold
15 was turned on for that particular email
16 account?

17 MR. MULE: I'm going to object.

18 BY MR. GIBBS:

19 Q. And the -- the question is just
20 do you know, not did an attorney instruct
21 you to do so. It's just do you know if a
22 litigation hold was placed on that
23 account?

24 MR. LABUDA: Yeah, I mean, I
25 think we're objecting.

1

2 Q. Sure.

3 Since the lawsuit has been
4 filed, have you ever emailed anyone about
5 the Long Island Avenue property?

6 A. No.

7 Q. What about the Horseblock Road
8 property?

9 A. No.

10 Q. And your attorneys represented
11 in this case that you have a practice of
12 regularly deleting text messages, and you
13 talked about that earlier.

14 And with respect to deleting
15 emails, have you stopped the practice of
16 deleting emails?

17 A. Yes, in the last few weeks.

18 Q. Approximately when would you say
19 you started that?

20 A. Maybe in the last four weeks.

21 Q. Do you communicate using text
22 messages on a regular basis?

23 A. Well, I'd rather call people
24 than use a text message.

25 Q. Do you use text messages

1

2 Q. Same question with respect to
3 the Long Island Avenue property.

4 A. I don't recall.

5 Q. And same question with respect
6 to the Horseblock Road property.

7 A. I don't recall.

8 Q. Do you send and receive text
9 messages with your son Don?

10 A. I do.

11 Q. And just talking about from the
12 beginning of the lawsuit to currently,
13 just in general how frequently would you
14 say that you text with your son Don?

15 A. Once a week, twice a week.

16 Q. And just generally speaking, I'm
17 not trying to get into your personal
18 private business, but generally what do
19 you guys talk about in text messages?

20 A. You know, my grandson's becoming
21 a baseball -- pretty good at it, and I'll
22 ask him how he's doing. So let's call
23 these things that we have on the phone
24 family-related questions: when's the
25 birthday party, what time.

1

2 Q. And any of those text messages,
3 do you save those, or do you delete those
4 as well?

5 A. I delete them.

6 Q. Since October of 2024, have you
7 deleted any text messages from Don, to or
8 from Don?

9 A. Yes, I'm sure 'cause that's my
10 practice.

11 Q. And since the beginning of the
12 lawsuit to the present, have you ever sent
13 or received any texts from Nick Giordano?

14 A. I might have received some texts
15 from Nick.

16 Q. How frequently would you say
17 that you exchange text messages with Nick?

18 A. Three times a week.

19 Q. And what types of things do you
20 typically discuss in text messages?

21 A. What was the years you said?

22 Q. From the beginning of the
23 lawsuit to the present. So that would be
24 March 21st, 2023 through today.

25 THE WITNESS: So I have a

1

2 question for you.

3

4 MR. LABUDA: Well, there's a
5 question pending. You can answer the
6 question and then we'd have to take a
7 break unless -- unless your -- there's
8 an issue about --

8

9 MR. MULE: Do you have a
10 question about privilege?

10

11 MR. LABUDA: -- communication
12 that we've had.

12

13 But you can -- I think the
14 question was whether or not you've had
15 conversations --

15

16 MR. GIBBS: Texts.

16

17 MR. LABUDA: What are the
18 substance of the conversations.

18

19 BY MR. GIBBS:

19

20 Q. What are the substances of the
21 text messages between you and Nick,
22 generally?

22

23 MR. MULE: From March of '23,
24 right?

24

25 MR. GIBBS: Correct.

25

THE WITNESS: My problem is the

1

2 dates that he's using.

3 MR. LABUDA: Well, he's saying
4 March of, so it's for the last two
5 years.

6 BY MR. GIBBS:

7 Q. Since Scapes Supply has been in
8 operation. Maybe that makes it easier.
9 Since Scapes Supply has been operating,
10 what are the topics of the text messages
11 between you and Nick?

12 A. It would be business related.

13 Q. Have you saved any of those text
14 messages?

15 A. No.

16 Q. When was the last time that you
17 exchanged text messages with Nick?

18 A. I'm sure yesterday.

19 Q. Have you retained those text
20 messages?

21 A. I'm sure I did.

22 Q. Since October of 2024, have you
23 deleted any text messages between you and
24 Nick?

25 A. October what?

1

2 Q. 2024.

3 A. October '24.

4 Yes.

5 Q. Do you have an estimate of how
6 many messages you deleted between you and
7 Nick?

8 A. I don't.

9 Q. When was the last time that you
10 deleted a text message to or from Nick?

11 A. I don't recall.

12 Q. Since this lawsuit was filed, or
13 to make it easier, since Scapes Supply was
14 opened for business in 2023, have you ever
15 backed up your cell phone?

16 A. No.

17 Q. And a slightly different way of
18 asking the question.

19 During that same time period,
20 since Scapes Supply opened, have you ever
21 had a third party back up your cell phone?

22 A. No.

23 Q. Have you personally made any
24 efforts to recover any deleted text
25 messages as part of this case?

1

2 documents as part of this lawsuit?

3 A. Can you repeat that?

4 Q. Do you have an understanding as

5 we sit here today that you have an

6 obligation to preserve documents and

7 communications as part of this lawsuit?

8 A. As we sit here today I do have

9 that knowledge.

10 Q. And when did you first come to

11 that understanding or first gain that

12 knowledge?

13 A. I believe it was my attorney

14 that told me --

15 MR. MULE: Objection.

16 MR. LABUDA: Objection.

17 We'd move to strike that.

18 Just you can answer the

19 question. The question was a specific

20 one which is when, when did you get

21 that knowledge about retaining, not

22 any --

23 MR. GIBBS: That's right.

24 MR. LABUDA: Yeah, so.

25 A. I couldn't -- I couldn't answer

1

2 when.

3

MR. GIBBS: No further

4

questions.

5

MR. LABUDA: Okay. Let's just

6

take a break for a second.

7

MR. GIBBS: Sure.

8

MR. LABUDA: Keep the record on.

9

THE WITNESS: I got one thing.

10

It'll be good.

11

MR. GIBBS: Are you sure?

12

MR. LABUDA: Exactly.

13

THE VIDEOGRAPHER: We are going

14

off the record.

15

The time is 11:59.

16

(Recess taken.)

17

THE VIDEOGRAPHER: We are going

18

back on the record.

19

The time is 12:09.

20

BY MR. GIBBS:

21

Q. And I've had further discussions

22

off the record about questions surrounding

23

the document marked as Exhibit 3, so I'm

24

revisiting that document to ask a few

25

particular questions.

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C E R T I F I C A T E

I, MARIE FOLEY, Registered Merit Reporter, Certified Realtime Reporter, and Notary Public for the State of New York, do hereby certify that prior to the commencement of the examination, VICTOR CAROLEO, was duly sworn by me to testify to the truth, the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a verbatim transcript of the testimony as taken stenographically by me at the time, place and on the date hereinbefore set forth, to the best of my ability.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

Marie Foley
COURT REPORTER

Registered Merit Reporter
Certified Realtime Reporter
Notary Public
Dated: March 18, 2025